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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

8 ESTATE OF VIOLA B. SPAULDING, *et al.*,

9 Case No. C 08-00672

10 Plaintiffs,

11 v.  
12 YORK CLEANERS, INC., *et al.*  
13 Defendants.

14 [PROPOSED] ORDER RE GOOD FAITH  
SETTLEMENT DETERMINATION AS TO  
MARTIN FRANCHISES, INC. AND  
ESTABLISHMENT OF THE MILLER AVENUE  
REMEDIAL TRUST

15

16 AND RELATED COUNTERCLAIMS,  
17 CROSS-CLAIMS, AND THIRD-PARTY  
CLAIMS

18

19 Hearing:  
April 17, 2009  
10:00 a.m.  
Court Rm. 8 on the 19th Floor  
Hon. Charles R. Breyer

20 Plaintiffs and Counter-Defendants the Estate of Viola B. Spaulding, Florence Spaulding, Lynn  
21 Spaulding doing business as Spaulding Enterprizes, Tina Spaulding Ward doing business as Spaulding  
22 Enterprizes, and the Conservatorship of Eileen Spaulding's (collectively, "Spaulding") Motion for  
23 Good Faith Settlement Determination and Establishment of the Miller Avenue Remediation Trust came  
24 on regularly for hearing by this Court on April 17, 2009, in Courtroom 8, before the Honorable Charles  
25 R. Breyer. After full consideration of the papers submitted, the oral representations of all interested  
parties and good cause appearing therefore, the motion is GRANTED as set forth below:

26 1. The Court finds and determines that the settlement has been entered into in good faith  
27 within the meaning of Sections 877 and 877.6 of the California Code of Civil Procedure and is hereby



1 approved as a good faith settlement.

2       2. Section 4 of the Uniform Comparative Fault Act (“UCATA”), §§ 1-9, 12 U.L.A. 63-107  
 3 (1996), in pertinent part, is hereby adopted as the federal and state common law in this case for the  
 4 purpose of determining the legal effect of the settlement on non-settling entities.

5       3. The Court finds that the second amended complaint, third party complaints, and answers  
 6 assert claims for contribution and indemnity as to Martin Franchises, Inc., either directly or through  
 7 alternative theories seeking damages for the environmental contamination.

8       4. Consistent with Sections 877 and 877.6 of the California Code of Civil Procedure and  
 9 Section 4 of the UCATA, all claims herein for contribution and indemnity as to Martin Franchises, Inc.,  
 10 no matter how denominated, are barred. Accordingly, those portion of Spaulding’s second amended  
 11 complaint and those portions of the third party complaints of York Cleaners, Inc. and David Victor  
 12 Lewis against Martin Franchises, Inc. are hereby dismissed with prejudice.

13       5. The Court retains continuing jurisdiction over the settlement and the settling parties to  
 14 resolve any action, adjudication, or dispute related to the settlement.

15       6. The Court further finds that a settlement fund should be, and hereby is, established, and  
 16 shall be operated so as to qualify either as a “Designated Settlement Fund” or “Qualified Settlement  
 17 Fund” pursuant to section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and the regulations  
 18 promulgated pursuant thereto and codified at 26 C.F.R. § 1.468B and in accordance with the terms and  
 19 conditions of the Declaration of Trust for the Miller Avenue Remediation Trust attached hereto as  
 20 Exhibit 1 and incorporated by reference as though fully set forth herein.

22           IT IS SO ORDERED.

23           DATED: May 11, 2009

